IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of case

W.P. No. 227 (M/S) 20031, decided on 26/9/2003

Virendra Kumar Pal

Vs.

M/s B.H.E.L. & others

A.F.R. (Approved for reporting)
~~Not approved for reporting~~

Date 26/9/03

Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 227 (MS) of 2003

(1) Sri Virendra Kumar Pal
S/o Sri Punna R/o Village Raoli
Mahdood, Pargana Jwalapur,
Tehsil and District Haridwar.
(2) Dharam Pal
S/o Sri Sangat R/o Village
Raoli Mahdood, Pargana
Jwalapur, Tehsil and District
Haridwar. …… Petitioner

Versus

(1) M/S Bharat Heavy Electricals
Limited, through its Manging
Director/Chairman, Ranipur,
Haridwar.
(2) Principal, Chinmaya Degree
College Ranipur, Haridwar ……. Respondents/Defendants.
(3) Vijay Pal Singh
S/o Sri Tika Singh R/o
Village Mahdood, Paragana
Jwalapur, Tehsil and District
Haridwar.
(4) Shiv Charan Pal S/o Sri
Balvant Singh R/o Village Raoli
Mahdood, Pargana Jwalapur,
Tehsil and District Haridwar.
(5) Molhad Singh S/o Sri Saktu
R/o Village Raoli Mahdood, paragana
Jwalapur, Tehsil and District Haridwar.

……. Proforma Respondents/Plaintiffs

Sri Pankaj Miglani for the petitioner
And Sri V.K. Kholi for the respondent

Dated: 26.09.2003

Hon'ble Rajesh Tandon J.

The present writ petition has been filed by the petitioner challenging the order dated 11.03.2002 whereby the appeal under order 43 rule 1CPC preferred by the petitioner has been rejected by the Additional District Judge, Haridwar.

Heard Sri Pankaj Miglani for the petitioner and Sri V.K. Kohli for the respondent at great length and perused the record.

Brief facts giving rise to the present writ petition are that a suit No. 296 of 1999 was filed by the petitioner praying for a decree of permanent injunction restraining the respondents from making any construction or changing the nature of the property.

According to the plaint averments the land in dispute was acquired by the State of U.P. for the purpose of Bharat Heavy Electricals Ltd.. The Petitioner has stated in paragraph 4 of the plaint that the land is lying vacant and, as such, the plaintiff/petitioner has every right to take the possession of the land. It was also stated in paragraph 9 of the plaint that a writ petition No. 1869 of 1999 has also been preferred by Sri Virendra Kumar and others Vs State of U.P. for quashing the acquisition proceedings and declaring the notification dated 08.02.1962 as null and void.

Alongwith the suit the petitioner has also filed an application under Order XXXIX rule 1 and 2 CPC. The trial court vide its order dated 01.07.2000 has rejected the application (paper No. 5G a/2). The learned Civil Judge (Senior Division), Haridwar has come to the conclusion that the land in dispute having been acquired by the State of U.P. for the purpose of the Bharat Heavy Electricals and the same

has already vested with the authority concerned after proceedings of acquisition were finalized. The Civil Judge, therefore, has come to the conclusion that there is no prima-facie case, balance of convenience and irreparable injury to the plaintiff so as to exercise the powers under order XXXIX rule 1 CPC.

Aggrieved by the aforesaid order the plaintiff has preferred an appeal. The appellate court has come to the conclusion that since the land in question was acquired for a public purpose and the B.H.E.L. is using the land for the public purpose and, as such, neither there is any prima-facie case in favour of the plaintiff nor he is in possession of the land in question so as to invoke the power contained under order XXXIX Rule 1 CPC. The appeal, therefore, was dismissed. Hence this writ petition has been filed under Article 227 of the Constitution of India.

In paragraphs 4 and 5 of the counter affidavit it has been stated by the respondents that vide Notification dated 15.11.1961 and 08.02.1962 issued under section 4 and 6 of land Acquisition Act, 1984 land was acquired for a public purpose, namely, construction of dwelling houses for workman and other workers and for setting up a factory for manufacture of Heavy Electrical instruments by M/S Heavy Electricals India Ltd. , New Delhi. Bharat Heavy Electricals Ltd. Is being a public sector undertaking registered under the Company's Act has an industrial township in Ranipur, district Haridwar. Paragraph 4 and 5 of the Counter affidavit are quoted below:

"That the notification dated 15.11.1961 and dated 8.2.1962 were issued under sections 4 and 6 of the Land Acquisition Act, 1894 acquiring vast track of lands in Haridwar (the then Saharanpur District) for a public purpose namely construction of dwelling houses for workman and other workers and for setting up a factory for manufacture of heavy electrical equipments by M/s Heavy Electricals (India) Ltd., New Delhi. Pursuant to the aforesaid acquisition, approximately 6700 Acres land and banjar land was acquired and handed over in favour of the Heavy Electricals (India) Ltd.

Consequently, an industrial township over a period of time came up on this acquired land which subsequently became Bharat Heavy Electricals Ltd. (BHEL) Township.

That by order dated 27.3.1974 passed by the Company Law Board under sub-section 1& 2 of section 396 of 1956, the Heavy Electricals (India) Ltd. Amalgamated with Bharat Heavy Electricals Ltd. By virtue of the aforesaid amalgamation order the Heavy Electricals Ltd. Merged with Bharat Heavy Electricals Limited in consequence of the amalagamation order w.e.f. the appointed dated i.e. 1.7.1974".

It was also stated in paragraph 10 of the counter affidavit that the suit is not legally maintainable. The land in question is being used for the purpose for which it was acquired. There is a reference in the plaint as well as in the counter affidavit that Virendra Kumar and others have filed a writ petition No.-1903/01. Paragraph 10 of the Counter affidavit are quoted below:

"That so far para. 1 of the petition is concerned it is submitted that Civil suit filed by the petitioners is not legally maintainable as these petitioners alongwith other have also earlier filed a Writ Petition bearing No.1903/01 (M/B), Virender Kumar Pal Vs State of U.P. & others, in which in addition to the State of U.P. , Collector, Haridwar and BHEL was also impleaded as a party by virtue of which the acquisition proceedings were challenged and also a relief was sought for return of the land and also to demolish the existing construction which included factories, office buildings, dwelling houses raised by them on the acquired land".

Counsel for the Respondent has brought to the notice of the Court during the hearing of the writ petition that the aforesaid writ petition No.1903 of 2001 has been decided on 23.7.2003 by the Division Bench of the Apex Court. The observations of the Division Bench are quoted below:-

"The acquired land, therefore, is fully covered under the definition of "public purpose" as defined under section 3(f) of Land Acquisition Act for the township of Bharat Heavy Electricals Ltd.

We have perused the writ petition, counter affidavits and rejoinder affidavit. We are of the opinion that writ petition is wholly misconceived as after a laps of 41 years it is not open for the petitioners to challenge the notification of the year 1961-62: further the acquisition having attained finally it is not open to the petitioner to challenge the same under Article 226 of Constitution of India. Moreover the validity of acquisition proceedings having already been adjudicated by the Apex Court on 7.12.98 and by Allahabad High Court on 01.02.1999 and now it is not open for the petitioners to challenge the same by subsequent writ petition under Article 226 of the Constitution of India".

So far as the applicability of the provisions Order XXXIX rule 1 CPC none of the ingredients of Order XXXIX rule 1 CPC is applicable in the present case. Neither the plaintiff is in possession nor there is any irreparable injury to the plaintiff, the balance of convience also is not in favour of the petitioner, the injunction therefore has rightly been refused by the two courts below.

In 1991 A.W.C. page 213 the full Bench of the Allahabad High Court has held that every interlocutory order under Article 226 of the Constitution of India can not be interfered unless it is found from the order impugned that fundamental principles of law has been violated and substantial injustice has been caused to the party. The observation of the Full Bench are quoted below:

"In our opinion, although every interlocutory order passed in a Civil Suit is not subject to review under Article 226 of the Constitution but if it is found from the order impugned that fundamental principle of law has been violated and further such an order causes substantial injustice to the party aggrieved".

In my opinion, therefore, order 39 rule 1CPC can not be invoked by the plaintiff, as the acquisition proceedings have already become final.

The Apex Court in C.Padma and others Vs Dy. Secretary to the Govt. of T.N and others(1997) 2 Court Cases 627 it has observed as under:

"It is seen that after the notification in GOR 1392 dated 17.10.1962 was published, the acquisition proceeding had become final, the compensation was paid to the appellants' father and thereafter the lands stood vested in the State".

Similar view has been taken in 1997(2) SCC. State of Kerala and others Vs M. Bhaskaram Pillai and another (1997) 5 Supreme Court cases 432. The observations of the Apex Court are quoted below:

"In view of the admitted position that the land in question was acquitted under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free form all encumbrances".

In U.P. Jal Nigam Vs Kalra properties 1996 (3) SCC.124, the Apex Court has taken the view that after the notification under Section17 (4) of the Land Acquisition Act the land vests in the State.

"It is further settled law that once possession is taken, by operation of Section 17 (2), the land vests in the State free from all encumbrances.……..…".

The present writ petition is not maintable as jurisdiction under Article 227 of the Constitution of India is limited as held by the Apex Court in AIR 1978 Supreme Court P. 45. The observations of the Apex Court are quoted below:-

"The limitation of the High Court while exercising power under Art.227 of the Constitution is well settled. Power under Art. 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts however erroneous those may be. It is well settled and perhaps too late in the day to refer to the decision of the Constitution Bench of this Court in Waryam Singh v Amarnath 1954 SCR 565 : (AIR 1954 SC 215) where the principles have been clearly laid down as follows:- (at p.217 of AIR)".

"This power of superintendence conferred by Art. 227 is, as pointed out by Harries C.J., in Dalmia Jain AIR 1951 Cal 193 (SB) to be exercised most sparingly and only in appropriate cases in order

to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors".

"We are clearly of opinion that there was no justification for interference in this case with the conclusions of facts by the High Court under Art. 227 of the Constitution. We are also unable to agree with the High Court that there was anything so grossly wrong and unjust or shocking the court's "conscience" that it was absolutely necessary in the interest of justice for the High Court to step in under Art.227 of the Constitution. Counsel for both sides took us through the reasonings given by the High Court as well as by the courts below and we are unable to hold that the High Court was at all correct in exercising its powers under Art. 227 of the Constitution to interfere with the decisions of the courts below . In our opinion the High Courts arrogated to itself the powers of a court of appeal, which it did not possess under the law, and has exceeded its jurisdiction under Art. 227 of the Constitution".

Therefore, I find no infirmity in the order passed by the Courts below. The orders passed by the two courts below are well reasoned orders and the injunction application under Order XXXIX rule 1 CPC is devoid of any force and therefore no interference is required in the writ petition.

The writ petition is dismissed. No order as to costs.

Dated:26.09.2003

(Rajesh Tandon, J.)